

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

GREGGORY BRETT OWINGS
Claimant

VS.

**WALTER A. YOUNG CONSTRUCTION
COMPANY, INC., AND BEYRLE CONSTRUCTION**
Respondent

AND

CIGNA
Insurance Carrier

AND

KANSAS WORKERS COMPENSATION FUND

Docket No. 192,579

ORDER

Respondent appeals from a Preliminary Hearing Order of November 7, 1994, wherein Administrative Law Judge Nelsonna Potts Barnes granted claimant benefits finding claimant was an employee of Beyrle Construction and not a partner as alleged by respondent and awarded benefits to the claimant from the general contractor, Young Construction, finding a relationship between the subcontractor and the principal or general contractor pursuant to K.S.A. 44-503.

ISSUES

- (1) Whether the Workers Compensation Act applies;
- (2) Whether Travelers Insurance has coverage over Beyrle Construction;
- (3) Whether claimant is an employee or a partner of Beyrle Construction and, whether claimant is a statutory employee of Young Construction.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Claimant began working for respondent, Beyrle Construction, in early 1993. Claimant's job duties included framing and siding houses under construction. Respondent alleges claimant was made a partner in Beyrle Construction but can provide no documentation to substantiate this claim. Claimant had no contract with the home owners or with the general contractor and received no percentage of the profits from the business. Claimant was paid a salary based upon his hours worked and respondent, Beyrle Construction, maintained supervisory control over claimant's work.

The evidence does not support respondent's contention that claimant is a partner in Beyrle Construction but rather supports claimant's contention that he is an employee of Beyrle Construction.

K.S.A. 44-503(a) states:

"Where any person (in this section referred to as principal) undertakes to execute any work which is a part of the principal's trade or business or which the principal has contracted to perform and contracts with any other person (in this section referred to as the contractor) for the execution by or under the contractor of the whole or any part of the work undertaken by the principal, the principal shall be liable to pay to any worker employed in the execution of the work any compensation under the workers compensation act which the principal would have been liable to pay if that worker had been immediately employed by the principal; and where compensation is claimed from or proceedings are taken against the principal, then in the application of the workers compensation act, references to the principal shall be substituted for references to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed."

Having found claimant to be an employee of Beyrle Construction, a subcontractor of the principal, Walter A. Young Construction, the Appeals Board further finds Walter A. Young Construction, as the general contractor, is liable, for preliminary hearing purposes, for all benefits awarded to claimant in this Order.

K.S.A. 44-534a limits the issues which may be appealed from a preliminary hearing. Preliminary hearing findings with regard to the following disputed issues shall be considered jurisdictional and subject to review by the Appeals Board:

- (A) Whether the employee suffered an accidental injury;
- (B) Whether the injury arose out of and in the course of employee's employment;
- (C) Whether notice is given or claim timely made;
- (D) Whether certain defenses apply.

In finding claimant to be an employee of Beyrle Construction, the Appeals Board has also decided claimant's injury arose out of and in the course of his employment and that the Workers Compensation Act applies. The remaining issues contained in the Administrative Law Judge's Order are not jurisdictional for the purpose of appeal from a preliminary hearing and same will not be disturbed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge Nelsonna Potts Barnes, dated November 7, 1994, is affirmed and remains in full force and effect.

IT IS SO ORDERED.

Dated this ____ day of February, 1995.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: John C. Nodgaard, Attorney at Law, Wichita, KS
Douglas C. Hobbs, Attorney at Law, Wichita, KS
Steve Beyrle, Attorney at Law, Wichita, KS
Nelsonna Potts Barnes, Administrative Law Judge
George Gomez, Director